



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2017–0026; 4500090024]

RIN 1018–BC64

Endangered and Threatened Wildlife and Plants; Technical Correction for Tonkin Snub-nosed Monkey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are making a technical correction to remove the endangered Tonkin snub-nosed monkey (*Rhinopithecus avunculus*) from certain regulations that apply to certain threatened primates. These regulations apply only to threatened species, and Tonkin snub-nosed monkeys were reclassified as an endangered species in 1990. Therefore, the provisions of the regulations for threatened primates do not apply to this species. We are correcting this error in the Code of Federal Regulations.

DATES: This action is effective [Insert date of publication in the **Federal Register**].

ADDRESSES: This final rule and a list of the references cited is available on the Internet at <http://www.regulations.gov> at Docket No. FWS–HQ–ES–2017–0026.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service; MS: ES, 5275

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SUPPLEMENTARY INFORMATION: The purpose of this final rule is to notify the public that we are removing the Tonkin snub-nosed langur from regulations in title 50 of the Code of Federal Regulations (CFR) that pertain to certain primates that are listed as threatened species under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 et seq.). The List of Endangered and Threatened Wildlife (List) under the Act is found at 50 CFR 17.11(h). The regulations that are the focus of this final rule are found at 50 CFR 17.40(c). We are removing the Tonkin snub-nosed langur (*Pygathrix [Rhinopithecus] avunculus*) from the list of primates in § 17.40(c)(1). (For reasons explained below in **Taxonomy**, the Tonkin snub-nosed langur (*Pygathrix [Rhinopithecus] avunculus*) is older nomenclature for the now generally accepted common and scientific names: Tonkin snub-nosed monkey (*Rhinopithecus avunculus*). In this document, we use the currently accepted common name Tonkin snub-nosed monkey.)

On January 9, 2016, we received a petition, dated the same day from People for the Ethical Treatment of Animals Foundation (PETA), requesting in part that Tonkin snub-nosed monkey be removed from the regulations at § 17.40(c), which pertain to threatened primates, because this species is listed as an endangered species under the Act at 50 CFR 17.11(h).

Background

Regulations such as those at 50 CFR 17.40(c) are promulgated under section 4(d) of the Act and are referred to as “4(d) rules.” These rules apply only to threatened species. Petitions to amend 4(d) rules are petitions under the Administrative Procedure Act (APA; 5 U.S.C. 553(e)) and are considered in accordance with 50 CFR 424.10; 424.14(a), (j), and Departmental

regulations at 43 CFR part 14. A final rule published in 1990 reclassified all Tonkin snub-nosed monkeys from threatened to endangered (55 FR 39414, September 27, 1990), so the provisions of the 4(d) rule can no longer be applied to this endangered species.

Accordingly, we are publishing this final rule without a prior proposal because this is a noncontroversial action that does not alter the regulatory protections afforded to this species and is a technical correction necessary to bring our regulations into conformity with the Act.

Previous Federal Actions

In 1976, as part of a decision to list 26 species of primates as threatened or endangered under the Act, the Service proposed to list Tonkin snub-nosed monkeys as a threatened species (41 FR 16466, April 19, 1976) and subsequently finalized the listing (41 FR 45990, October 19, 1976). In the same rulemaking, Tonkin snub-nosed monkeys were included in a new 4(d) rule for threatened primates at 50 CFR 17.40(c).

In 1990, all Tonkin snub-nosed monkeys were reclassified from threatened to endangered (55 FR 39414, September 27, 1990).

In both the proposed rule and final rule reclassifying the species from threatened to endangered status (55 FR 1486, January 16, 1990; 55 FR 39414, September 27, 1990), the Service indicated through the informational text “NA” (not applicable) in the “Special rules” column of the List at 50 CFR 17.11(h) that there are no 4(d) rules for that particular species. However, we failed to make the corresponding change to 50 CFR 17.40(c) to reflect the fact that the provisions there no longer applied to the now-endangered Tonkin snub-nosed monkey.

Taxonomy

The terms monkey and langur are both used interchangeably in the common name for this species. However, the International Union for Conservation of Nature (IUCN) Red List, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Integrated Taxonomic Information System (ITIS), and the List at 50 CFR 17.11(h) all use the term “monkey” for this species.

The Tonkin snub-nosed monkey is currently listed in § 17.40(c)(1) as “Tonkin snub-nosed langur (*Pygathrix [Rhinopithecus] avunculus*).” The snub-nosed monkeys of the genus *Rhinopithecus* were formerly listed as a subgenus of *Pygathrix*, but *Rhinopithecus* was elevated to the full genus level in 2001 (Groves 2001, p. 287). This taxonomic change is now widely accepted in the scientific community, including CITES (CITES 2017, p. 5), ITIS (ITIS 2017, unpaginated), and IUCN Red List (IUCN 2017, unpaginated). Therefore, in this final rule we refer to the species as Tonkin snub-nosed monkey (*Rhinopithecus avunculus*), which is also how the species is presented in the List at 50 CFR 17.11(h).

Administrative Procedure

As explained above, this rulemaking is necessary to bring our regulations into compliance with the Act. Therefore, under these circumstances, we have determined, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and opportunity for public comment are impractical and unnecessary. Public opportunity for comment is simply not required when an agency amends a regulation to remove regulatory provisions that are not consistent with law. Such action is ministerial in nature and allows for no discretion on the part of the agency. Thus, public comment could not inform this process in any meaningful way. We have further determined,

pursuant to 5 U.S.C. 553(d)(3), that the agency has good cause to make this rule effective upon publication, which is to comply with the Act as soon as practicable.

List of References Cited

A list of the references cited in this final rule is provided in Docket No. FWS–HQ–ES–2017–0026 at <http://www.regulations.gov>.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.40 [Amended]

2. Amend § 17.40(c)(1) by:

- a. Adding the word “and” before “purple-faced langur (*Presbytis senex*)”; and
- b. Removing the phrase “; and Tonkin snub-nosed langur (*Pygathrix [Rhinopithecus] avunculus*)”.

Dated: August 30, 2017.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2017-18866 Filed: 9/5/2017 8:45 am; Publication Date: 9/6/2017]